



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

on

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,036	05/15/2001	Shinichi Kanno	31090.0015	2475

7590

04/29/2003

Ranjana Kadle
Hodgson Russ LLP
Suite 2000
One M&T Plaza
Buffalo, NY 14203-2391

EXAMINER

DROESCH, KRISTEN L

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 04/29/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/858,036

Applicant(s)

KANNO ET AL.

Examiner

Kristen L Droesch

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because of the language "The present invention discloses . . .". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-6, 8-11, and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Conrad-Vladak et al. (6,463,323). Conrad-Vladak et al. shows a method of increasing VEGF in a muscle cell and angiogenesis in a muscle tissue comprising the step of applying electrical voltage to the muscle cell or one or more areas of the muscle tissue, wherein the electrical voltage does not induce contraction of the muscle cells and wherein VEGF is increased and angiogenesis is induced after application of the electrical voltage (Col. 10, lines 31-43).

Referring specifically to claims 6, and 10, although Conrad-Vladak et al. does not specifically point out the increase of VEGF mRNA but an increase VEGF gene expression, the Hang et al. article *VEGF gene expression is upregulated in electrically stimulated rat skeletal muscle* used the terms VEGF gene expression and VEGF mRNA interchangeably.

Art Unit: 3762

Regarding claims 3, 8, and 14, Conrad-Vladak et al. shows stimulating a target tissue including a limb, which inherently includes smooth muscle that surrounds blood vessels located within the limb (Fig. 8A).

With respect to claims 4, 9, and 14, Conrad-Vladak et al. shows stimulating a target tissue including a limb, which inherently includes skeletal muscle located within the limb (Fig. 8A).

Regarding claims 5, 10, and 15, Conrad-Vladak et al. shows the muscle is cardiac muscle (Fig. 10).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 7, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conrad-Vladak et al. (6,463,323). Conrad-Vladak et al. discloses the claimed invention except for the electrical voltage being 0.1V at 50Hz. It would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to modify the voltage and frequency as taught by Conrad-Vladak et al. with 0.1V at 50Hz, since applicant has not disclosed that this particular voltage and frequency provides any criticality and /or unexpected results and it appears that the invention would perform equally well with any voltage and frequency such as

Art Unit: 3762

the voltage and frequency taught by Conrad-Vladak et al. for inducing angiogenesis without inducing contraction of the muscle cells.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen L Droesch whose telephone number is 703-605-1185.

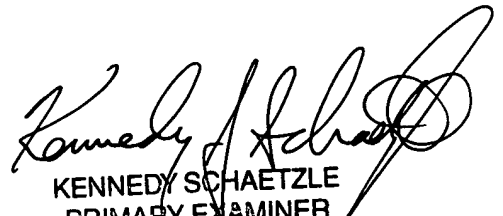
The examiner can normally be reached on M-F, 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes can be reached on 703-308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



kld
April 18, 2003



KENNEDY SCHAETZLE
PRIMARY EXAMINER
4-20-03